



WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

GUIDANCE DOCUMENT CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections §227.10 and §227.11 of the Wisconsin Statutes.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

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Name of Individual Certifying this Document/Proposed Document

ADMINISTRATOR, DIVISION OF COMMUNITY CORRECTIONS

Title


[Handwritten Signature]

Signature

6/25/19

Date Signed

Department of Corrections – Wisconsin
Office of the Secretary
Wis. Stat. § 227.112(6)
DOC-2910 (6/2019)

 <p style="text-align: center;">WISCONSIN DEPARTMENT OF CORRECTIONS Division of Community Corrections DOC-1356 (Rev. 12/2009) Administrative Directive # 15-18 AMENDED Replaces AD 13-06</p>	EFFECTIVE DATE August 17, 2015	PAGE NUMBER 1 of 6
	MANUAL REFERENCE	<input type="checkbox"/> New <input checked="" type="checkbox"/> Revision
	Administrator's Office Denise Symdon <i>Denise Symdon</i>	
DISSEMINATION <input checked="" type="checkbox"/> All Staff <input type="checkbox"/> Supervisory Staff Only		PRIORITY <input checked="" type="checkbox"/> Policy/Directive <input type="checkbox"/> Information Discuss at Staff Meeting Read/Route/Post
SUBJECT: DCC Public Records Requests for Supervision Records		

References:

- §16.61 and §§19.31 through 19.39, and §§146.81-84, Wis. Stats.
- Executive Directive 21 – Access to Public Records and Designation and Duties of Department Legal Custodian and Legal Custodians
- DCC Electronic Case Reference Manual – Supervision Process – Records Management
- Health Services Policy/Procedure (HS P/P) #500:08 – Requests By Patients to Inspect and Obtain Copies of Their Protected Health Information
- Health Services Policy/Procedure (HS P/P) #500:09 – Disclosure of Protected Health Information with Patient Authorization
- 45 C.F.R. Part 160.103
- AD 15-01: Attorney Access to DCC Supervision File During Revocation or Court Proceedings
- AD 15-17: DCC Mental Health Records Management
- AD 15-02: TIME System Security

Policy Statement: The Division of Community Corrections Regional Records Custodians shall be responsible for maintaining the records and enabling requesters to make requests for DCC supervision records, providing timely access to DCC supervision records, obtaining and providing copies of DCC supervision records, and collecting fees. This includes offenders and inmates requesting to inspect and/or receive copies of his/her DCC supervision file.

NOTE:

- If the request for records is from an attorney representing an offender in a current court proceeding or revocation proceeding, please see DCC AD 15-01.
- If the request is seeking DCC mental health records that are not within the DCC supervision file, please see DCC AD 15-17.

Definitions, Acronyms:

CFR: Code of Federal Regulations

DCC Regional Records Custodians: "Legal Custodians" as defined in ED 21.

Health Information: Any information, whether oral or recorded in any form or medium, that (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of any individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Individually Identifiable Health Information: As defined in 45 CFR 160.103 is a subset of health information [defined above], including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; **and** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Inmate: A person who is committed or incarcerated in an institution, state prison, or county jail.

Protected Health Information (PHI): Individually identifiable health information [defined above] that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.

Personally Identifiable Information (PII): Personally identifiable information means information that can be associated with a particular individual through one or more identifiers or other information or circumstances. (Wis. Stats., § 19.62(5)).

Requester: Per Wis. Stat., §19.32 (3), requester means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his/her minor children for whom he or she has not been denied physical placement under Ch. 767, and the record is otherwise accessible to the person by law.

In the context of this administrative directive, "requester" also refers to a DCC supervised offender in the community on DCC supervision, committed or incarcerated person in an institution, prison or jail (inmate) who requests inspection and/or copies of only his/her DCC supervision file(s) which contain specific references to that person or his/her minor children who have not been denied placement with the offender under the law.

Forms:

DOC-184	– Disbursement Request
DOC-1241	– Public Notice Access to Department of Corrections Records
DOC-1160	– Records Request Response
DOC-1163	– Authorization for Disclosure of Non-Health Confidential Information
DOC-1163A	– Authorization for Use and Disclosure of Protected Health Information
DOC-2354	– Prior Record Listing
DOC-3011	– Fees for Copies of Health Care Records
DOC-2672	– Inspection of Public Records - Acknowledgement

Procedure:

I. DCC REGIONAL STAFF WILL:

- 1) Promptly deliver any verbal, written, or electronic requests for records received to the appropriate DCC Regional Records Custodian.
- 2) Prominently display the Notice of Records Procedures (DOC-1241 and DOC-1241S) in a place that is accessible to the public.
- 3) Ensure all requesters granted inspection of records sign the "Inspection of Public Records Acknowledgement" (DOC-2672) at the time of inspection. This acknowledgement is then sent to the DCC Regional Records Custodian for inclusion in the public records requests file.

II. DCC REGIONAL RECORDS CUSTODIANS WILL:

- 1) Complete two online courses available through the DOC Training Center: "Introduction to Public Records" and "Public Records for Legal Custodians." These DOC-sponsored training courses will provide DCC Regional Records Custodian with information on the duties and responsibilities

- of a legal records custodian, the basics of the public records law, procedures on responding to records requests, and use of the tracking system.
- 2) Attend/complete other applicable public records training as available or required.
 - 3) Ensure that DCC offices prominently display the Notice of Records Procedures (DOC-1241 and DOC-1241S) in a place that is accessible to the public.
 - 4) Receive all records requests, for assigned region, under the public records law. If the request is vague (i.e. does not state subject matter and timeframe), ask the requester (in writing preferred) to clarify the request.
 - 5) Send to the requester an acknowledgement of receipt of the request by email or letter if the request cannot be granted within 10 days. Include an estimated timeframe to complete the request in the acknowledgement of receipt .
 - 6) Enter the request into the tracking system. This system is on the SharePoint site for Division of Management Services (DMS) and Office of Records Management (ORM). To get approval for access, the DCC Regional Records Custodian's supervisor will contact the Office of Records Management Director.
 - 7) Ensure that requesters granted inspection of records sign the "Inspection of Public Records Acknowledgement" (DOC-2672) at the time of inspection. The DCC Regional Records Custodian will receive the signed acknowledgement from the local offices for inclusion in the public records requests file.
 - 8) Maintain public record requests in files by month and year of the request per the DCC ECRM.
 - a. Minimum records to be maintained are: the original request, the Record Request Response (DOC-1160), the Inspection of Public Records Acknowledgement (DOC-2672), and copies of the records granted or denied in whole or in part.
 - b. The public record requests file will be maintained in accordance with the applicable DOC approved RDAs by the State of Wisconsin Public Records Board.
 - c. Record requests are not placed in offender or inmate files.
 - d. Per ED 21, no record, otherwise authorized for destruction under an applicable RDA, may be destroyed after the receipt of a request for the inspection or copying of the record until the request is granted, or at least 60 days after the date of a denial of a request, or 90 days if the requester is a committed or incarcerated person.

III. GENERAL PROCEDURE FOR HANDLING PUBLIC RECORDS REQUESTS

- 1) Does record exist?: The records custodian shall determine whether or not the requested record(s) exists. DCC is not required to create a record where one does not already exist and it is the policy of the DCC not to create such records. The request may be for inspection and/or for copies of the record.
- 2) Confidential Information: If the requester is seeking access and/or copies of records related to PHI (Protected Health Information), PII (Personally Identifying Information) or other information confidential as a matter of law such as educational records or juvenile records, the record custodian SHALL NOT permit access or copies of said records without a properly executed release from the subject of the record, i.e., DOC-1163 and DOC-1163A.
 - a. A record may need to be redacted if it contains information that may be disclosed and information that may not be disclosed as a public record.
 - b. The DCC Regional Records Custodian must determine the validity of an authorized release of PHI, PII or confidential record based upon Wisconsin and federal laws. It is important for the record custodian to carefully scrutinize the authorization or release to determine if all or part of a particular record may be disclosed, inspected or copied.
 - c. All PHI, PII and confidential information that is lawfully contained in the DCC supervision file may be re-disclosed if a properly executed DOC-1163 and or DOC-1163A has been provided.

NOTE: Some information that is confidential as a matter of law may not be re-disclosed without a court order, i.e., PSI, juvenile records.

- d. If the request is for mental health care records (psychological or psychiatric) generated by DCC and the records do not appear in the DCC supervision file, the record custodian may direct the requestor to the proper custodian for mental health records per DCC AD 15- 17.
- 3) Records exempt from public records requests: The records custodian shall determine whether there are statutory or other exemptions or limitations on public release of the requested records, in whole or in part [(§§19.31, 19.35(1)(am), 19.36 Wis. Stats. and DCC Electronic Case Reference Manual)]. The DCC Regional Records Custodian shall determine records exempt from disclosure, and, when necessary, further consultation may be received from the DOC Office of Records Management (Department Legal Custodian) and the Office of Legal Counsel (Chief Legal Counsel).
- a. Pre-sentence investigation (PSI) reports – Inspection or copies of this document requires a court order. DOC/DCC may only utilize the report for one of the purposes identified in Wisconsin Statutes, s. 972.15(5).
 - b. Third-party PHI – This includes medical records obtained/maintained in the supervision file of individuals other than the offender, i.e. victim.
 - c. Juvenile records (Note: Offenders and inmates can permit access to juvenile records involving themselves that may be retained in DCC files. Information as to other juveniles may need to be redacted unless the document is already in the public domain, such as a criminal complaint.)
 - d. Records containing PII collected or maintained in connection with a complaint or an investigation that may lead to an enforcement action, an administrative proceeding, arbitration proceeding or court proceeding, or any such records which are collected or maintained in connection with such an action are exempt from disclosure.
 - e. Any record containing PII that, if disclosed, would do any of the following are exempt from disclosure:
 - i. Endanger an individual's life or safety
 - ii. Identify a confidential informant
 - iii. Endanger the security of a prison, its population or staff
 - iv. Compromise the rehabilitation of a person in the custody of the DOC
 - f. Criminal history record information obtained from the FBI's NCIC (e.g. FBI "rap sheets", TIME/NCIC information).
 - i. Per AD 15-02 (TIME System Security), it is mandated that criminal history background check records (either electronic media or printed) provided by the Department of Justice must be securely disposed or destroyed when the purpose for which it was requested has concluded (e.g. intake, PSI).
 - ii. The criminal history record information may be copied into the Prior Record Listing in DOC-2354, or some other format, and be kept in the DCC supervision file. This information may be disclosed.
 - g. Any record that is part of a record series that is not indexed, arranged, or automated in a way that the record can be easily retrieved by the authority maintaining the records series by use of an individual's name, address, or other identifier.
 - h. Victim information (names, addresses, and other identifying information)
 - i. Attorney/client communication
 - j. Computer programs
 - k. Investigative information obtained by law enforcement agencies (includes DOC), as required by law for ongoing investigations
 - l. PII which, if disclosed, could lead to identity theft. PII includes, but is not limited to, an individual's first name or initial and last name, in combination with one or more of the following identifiers:

- i. Social Security Number,
- ii. driver's license or Wisconsin identification number (state ID),
- iii. bank account or credit card number, or any code or password that permits access to an individual's financial account,
- iv. full date of birth,
- v. DNA (deoxyribonucleic acid) profile, as defined in Wis. Stat., §939.74 (2d)(a),
- vi. Any unique biometric data, including fingerprint, voice print, retina or iris image, or other unique physical representation.
- vii. *Note: State employee names alone are subject to disclosure.*

4) Public Records Release Balancing Test

- The DCC Regional Records Custodian must balance the strong public interest in disclosure of the record against the public interest favoring nondisclosure.
- The DCC Regional Records Custodian must consider all relevant factors to determine whether permitting record access would result in harm to the public interest that outweighs the legislative policy recognizing the strong public interest in allowing access. Wis. Stat. § 19.35(1)(a).

5) Redaction: Redact documents that include information that is exempt from disclosure or contains confidential information restricted from release in which a valid authorization from the subject of the record has not been obtained. The DCC Regional Records Custodian will:

- a. Make a copy of the original document (paper copy or scan to a pdf) and redact exempt and confidential information with a black marker, white-out tape, or electronically black out on the pdf. Copy or print the redacted document, distribute or make available for inspection the copy or print out of the redacted document, and re-file the original document.
- b. Verify that the redacted information cannot be read on the copy or print out by holding it up to a light. In some cases, it may be necessary to redact again (with the black marker or white-out) the information on the first redacted copy, and make a copy of that copy.
- c. Include a reason for the redaction in the DOC-1160.

6) Response: Regardless of how the request was made (verbal, written, or electronic), respond in writing using the DOC-1160 form as soon as practicable and without delay by either granting the request or notifying the requester of the decision to deny the request in whole or in part and the reasons therefore.

- a. Denials: Justify the denial of a record request, in whole or in part, by indicating the reason on the DOC-1160. Some examples of reasons of denial may be:
 - 1. The requester does not meet the statutory definition of a requester in §19.32 (3), Wis. Stats.
 - 2. The record is exempt from disclosure due to statutory or other exemptions or limitations on public release of the requested records.
 - 3. The record is not contained in the DCC supervision file. Requester is referred to the official record custodian of the record sought.
 - 4. If a valid authorization from the subject of the requested records has **not** been obtained and provided with the request, and the requester is asking for health information, the following standardized language should be used in response to the requester on the DOC-1160:

"State and federal laws protect the confidentiality of medical, mental health, and alcohol/drug abuse information. The laws require a legally valid signed authorization by the subject of the information (patient), or a person authorized to act on behalf of the patient. Your request involves health information protected by one or more of

the following laws: ss. 146.81-.84, s. 51.30 and/or s. 252.15, Wisconsin Statutes, and/or 42 Code of Federal Regulations Part 2, and 45 Code of Federal Regulations Part 164. The DOC Authorization for Use and Disclosure of Protected Health Information (DOC-1163A) form is being provided because no authorization form or an invalid form was submitted with your request. Upon receipt of the properly completed form, and pre-payment of fees when required, the DOC will provide the health information requested."

- 7) Inspection: Requesters may seek a review of the DCC supervision file prior to requesting copies.
- a. Requesters shall ONLY have supervised inspection of the file after appropriate redactions and or confidential information has been removed. Redactions and removals should be noted on the DOC-1160.
 - b. If an inmate requests access to review/inspect his/her supervision file, the agent may be allowed to take the original offender file with redactions to the institution or may forward a redacted copy of the file to the social worker at the institution for a supervised inspection.
 - i) In this case, the agent (or designee) must directly observe the inmate's inspection with oversight from the DAI Legal Custodian and in conjunction with DAI security procedures.

All other inspections of the DCC supervision file shall take place at the local DCC office where the file is maintained as designated by the Regional Records Custodian.

IV. FEES

Guidance for search, photocopying, electronic copying, other format copying and mailing or shipping is contained in the Wisconsin Statutes and Section VIII of ED 21. Pursuant to Wisconsin Statute, ss. 19.35(3)(f) an authority may require prepayment by a requestor of any fee or fees imposed under if the amount exceeds \$5.00. If the requester is a prisoner as defined in s. 301.01(2) or is confined in a federal correctional institution in this state, and he or she has failed to pay any fee that was imposed by the authority for a request made previously by the requester, the authority may require prepayment both of the amount owed for the previous request and the amount owed for the current request.